

### **REMARKS**

This responds to the Office Action dated April 20, 2005. Claims 1, 3, 4, 15, 16, 28, 29, 35, 36, 47, 48, 66, 70 and 95 are amended, no claims are canceled, and no claims are added. Thus, claims 1-95 remain pending in this application. Of these 95 pending claims, claims 1-5, 15-72 and 93-95 are currently being examined and claims 6-14 and 73-92 currently stand withdrawn. Applicants respectfully submit that the amendments to the claims further clarify the language recited in the claims and are supported by the originally-filed application, and that no new matter is added.

### **Information Disclosure Statements**

Applicants are submitting an Information Disclosure Statement and a 1449 Form along with this Response. Applicants respectfully request that an initialed copy of the 1449 Form, be returned to Applicants' Representatives to indicate that the references have been considered by the Examiner.

### **§103 Rejection of the Claims**

Claims 1-5, 15-21, 24-26, 30, 32-33, 36, 47-53, 56-58, 64-65 and 94 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) in view of Anderson (U.S. Patent No. 5,721,783). Applicants respectfully traverse.

The rejection states that "Brennan teaches a hearing aid comprising: programming software in a hearing aid through a (sic) interface link" and admits that "Brennan does not clearly teach a mobile device using at (sic) standard mobile wireless communication protocol." The rejection further states that Anderson teaches a mobile device using a standard wireless communication inherently protocol (sic)." The rejection asserts that the motivation to combine the Brennan and Anderson references is "to provide a new and useful auditory aid for hearing impaired persons by removing audio signal enhancement functions from the earpiece and placing them in an RPU." The rejection continues stating that the use of an RPU provides several advantage over system that attempt to place all system capabilities within the earpiece, and that

the RPU approach allows a simple earpiece design comprising a miniature low-power wireless transceiver, microphone and speaker.

Applicants respectfully assert that the office action does not include a *prima facie* rejection under §103. As identified more specifically below, Applicants respectfully assert that the rejection has not shown claimed subject matter in the combination of Brennan and Anderson. Additionally, Applicants respectfully assert that the recited motivation is improper. “The factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions and cannot be dispensed with.” In re Sang-Su Lee, 277 F.3d 1338, 1343 (Fed. Cir. 2002).

As identified the rejection, Anderson removes audio signal enhancement functions from the earpiece and places them in the RPU (*see also* Col. 1 line 55 to Col. 2 line 6 and Col. 2 lines 36-39 of Anderson). The processing means in the RPU appear to be programmed by voice commands via a wireless communication link between the earpiece and the RPU (*see*, for example, claims 13, 45 and 66 of Anderson). The audio signal enhancement functions are in the RPU rather than the earpiece. Thus, the RPU does not program software in the earpiece. As such, there is no motivation to add Brennan’s programming interface link to the earpiece of Anderson since the audio signal enhancement functions are in the RPU. Thus, Applicants respectfully submit that the rejection fails to provide objective evidence that would support a motivation to combine.

Additionally, as provided below, Applicants respectfully assert that the combination of Brennan and Anderson fails to show the claimed subject matter. The references must teach or suggest all the claim elements. MPEP §2142.

With respect to amended independent claim 1, Applicants are unable to find, among other things, in the cited portions of Brennan and Anderson a showing or a fair suggestion of method where a mobile wireless communication protocol is used to communicate between a mobile device and a programming fitting server, and software in a hearing aid is programmed using the programming fitting server and the mobile device, as recited in the claim. Claims 2-3 depend on claim 1 and are believed to be in condition for allowance for at least the reasons provided with respect to claim 1.

With respect to amended independent claim 4, Applicants are unable to find, among other things, in the cited portions of Brennan and Anderson a showing or a fair suggestion of a method where a hearing aid system is programmed through a mobile device using at least one mobile wireless communication protocol, where a distributed application is received in the mobile device from a programming fitting server through at least one long-range network using the at least one mobile wireless communication protocol, and where the distributed application is used to program a hearing aid in the hearing aid system, as recited in the claim. Claim 5 depends on claim 4, and is believed to be in condition for allowance for at least the reasons provided with respect to claim 4.

With respect to amended independent claim 15, Applicants are unable to find, among other things, in the cited portions of Brennan and Anderson a showing or a fair suggestion of a system comprising a hearing aid system having a hearing aid, a programming fitting server, and a mobile device adapted to use a mobile wireless communication protocol to communicate with the programming fitting server and to program software in the hearing aid, as recited in the claim. Claims 16-21, 24-26, 30 and 32-33 depend, either directly or indirectly, on claim 15 and are believed to be in condition for allowance for at least the reasons provided with respect to claim 15.

With respect to amended independent claim 36, Applicants are unable to find, among other things, in the cited portions of Brennan and Anderson a showing or a fair suggestion of a system comprising a hearing aid system having a hearing aid, a distributed application, and a mobile device adapted to program the hearing aid, where the mobile device adapted to use a mobile wireless communication protocol to receive the distributed application from a computer from a long-range network, and to use the distributed application to program the hearing aid, as recited in the claim. Claim 94 depends on claim 36, and is believed to be in condition for allowance for at least the reasons provided with respect to claim 36.

With respect to amended independent claim 47, Applicants are unable to find, among other things, in the cited portions of Brennan and Anderson a showing or a fair suggestion of a system comprising a hearing aid system having a hearing aid, and a terminal adapted to program software in the hearing aid, where the terminal is adapted to use at least one wireless communication protocol to communicate with a programming fitting server to program the

software, as recited in the claim. Claims 48-53, 56-58 and 64-65 depend, either directly or indirectly, on claim 47 and are believed to be in condition for allowance for at least the reasons provided with respect to claim 47.

Claims 22-23 and 54-55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) as modified by Anderson (U.S. Patent No. 5,721,783) as claims 15 and 47 above, and further in view of Shennib (U.S. Patent No. 5,197,332). Applicants respectfully traverse. Claims 22 and 23 depend indirectly on claim 15, and are believed to be in condition for allowance with claim 15. Claims 54-55 depend indirectly on claim 47, and are believed to be in condition for allowance for at least the reasons provided with respect to claim 47. The rejection combining Brennan, Anderson and Shennib fails to provide a prima facie §103 rejection, which requires an objective motivation to modify or combine the references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations.

Claims 27-29, 31-32, 34-35 and 59-63 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) as modified by Anderson (U.S. Patent No. 5,721,783) as claims 15 and 47 above, and further in view of Leppisaari et al. (U.S. Patent No. 6,717,925). Applicants respectfully traverse. Claims 27-29, 31-32 and 34-35 depend, either directly or indirectly, on claim 15, and are believed to be in condition for allowance for at least the reasons provided with respect to claim 15. Claims 59-63 depend, either directly or indirectly, on claim 47, and are believed to be in condition for allowance for at least the reasons provided with respect to claim 47. The rejection combining Brennan, Anderson and Leppisaari fails to provide a prima facie §103 rejection, which requires an objective motivation to modify or combine the references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations.

Claims 37-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) as modified by Anderson (U.S. Patent No. 5,721,783) as claim 36 above, and further in view of Szymansky (U.S. Patent No. 6,557,029). Applicants respectfully traverse. Claims 37-40 depend, either directly or indirectly, on claim 36, and are believed to be in condition for allowance for at least the reasons provided with respect to claim 36. The rejection combining Brennan, Anderson and Szymansky fails to provide a prima facie §103

rejection, which requires an objective motivation to modify or combine the references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations.

Claims 41 and 71 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) as modified by Anderson (U.S. Patent No. 5,721,783) as claims 15-16 and 47-48 above, and further in view of Knappe (U.S. Patent No. 6,061,431). Applicants respectfully traverse. Claim 41 depends indirectly on claim 16, and is believed to be in condition for allowance for at least the reasons provided with respect to claim 16. Claim 71 depends indirectly on claim 47, and is believed to be in condition for allowance for at least the reasons provided with respect to claim 71. The rejection combining Brennan, Anderson and Knappe fails to provide a prima facie §103 rejection, which requires an objective motivation to modify or combine the references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations.

Claims 43-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) as modified by Anderson (U.S. Patent No. 5,721,783) as claims 15 and 24 above, and further in view of Fazio (U.S. Patent No. 6,590,986). Applicants respectfully traverse. Claims 43-46 depend, either directly or indirectly on claim 15, and are believed to be in condition for allowance for at least the reasons provided with respect to claim 15. The rejection combining Brennan, Anderson and Fazio fails to provide a prima facie §103 rejection, which requires an objective motivation to modify or combine the references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations.

Claims 42 and 72 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) and Anderson (U.S. Patent No. 5,721,783) as modified by Leppisaari et al. (U.S. Patent No. 6,717,925), as applied to claims 15 and 31 above, and further in view of Peters (U.S. Patent No. 6,601,093). Applicants respectfully traverse. Claim 42 depends indirectly on claim 15, and is believed to be in condition for allowance for at least the reasons provided with respect to claim 15. Claim 72 depends indirectly on claim 47, and is believed to be in condition for allowance for at least the reasons provided with respect to claim 15. The rejection combining Brennan, Anderson, Leppisaari and Peters fails to provide a prima facie §103 rejection, which requires an objective motivation to modify or combine the

references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations.

Claims 66 and 68-69 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) in view of Knappe (U.S. Patent No. 6,601,431). Applicants respectfully traverse, and submit that the rejection combining Brennan and Knappe fails to provide a prima facie §103 rejection, which requires an objective motivation to modify or combine the references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations. The rejection states that Brennan teaches a distributed application. Applicants cannot find a distributed application in Brennan. The rejection further states that it would be obvious to combine the teachings of Knappe into Brennan to provide hearing compensation parameters stored in a searchable attribute database associated with a user's telephone number. Applicants respectfully traverse this motivation to combine, and submit that it is not based on objective evidence as required by In re Lee. Applicants are unable to find object evidence, nor is it obvious to Applicants, why one would want to store parameters for the device of Brennan in a database associated with a user's telephone number.

With respect to amended independent claim 66, Applicants are unable to find, among other things, in the cited portions of Brennan and Knappe a showing or a fair suggestion of a system, comprising a hearing aid system having a hearing aid, a programming fitting server adapted to store a distributed application, and a terminal adapted to program the hearing aid, where the terminal is adapted to communicate using a wireless communication protocol to receive the distributed application from the server from a long-range network, and the mobile device is adapted to use the distributed application to interact with the hearing aid, as recited in the claim. Claims 68-69 depend on claim 66, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 66.

Claims 67 and 70 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) as modified by Knappe (U.S. Patent No. 6,601,431) as applied to claim 66 above, and further in view of Peters (U.S. Patent No. 6,601,093). Applicants respectfully traverse. Claims 67 and 70 depend on claim 66, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 66. The rejection combining Brennan, Knappe and Peters fails to provide a prima facie §103 rejection, which requires an

objective motivation to modify or combine the references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations.

Claims 93 and 95 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brennan (U.S. Patent No. 6,236,731) as modified by Anderson (U.S. Patent No. 5,721,783) as claim 36 above, and further in view of Peters (U.S. Patent No. 6,601,093). Applicants respectfully traverse. Claims 93 and 95 depend on claim 36, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 36. The rejection combining Brennan, Anderson and Peters fails to provide a prima facie §103 rejection, which requires an objective motivation to modify or combine the references, a reasonable expectation of success, and a teaching or suggestion of all the claim limitations.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

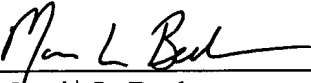
Respectfully submitted,

ANTHONY M. EATON ET AL.

By their Representatives,


SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6960

Date 8-22-05

By   
Marvin L. Beekman  
Reg. No. 38,377

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 22 day of August, 2005.

KATE GANNON  
Name

  
Signature